

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C.A. NO.: 04-CV-12253MLW

STEVEN MCDERMOTT and	)
STACEY MCDERMOTT,	)
Plaintiffs	)
	)
v.	)
	)
FEDEX GROUND PACKAGE SYSTEMS, INC.,	)
T.S. PRUITT, ALLEGIANCE HEALTHCARE	)
INC., D. PONCE, E.W. WYLIE	)
CORPORATION, D.W. SMITH,	)
ARSENBERGER TRUCKING, INC.,	)
J.T. FOSBRINK, RYDER TRUCK RENTAL,	)
LORRAINE ODZANA as ADMINISTRATRIX	)
OF THE ESTATE OF JAMES J. ODZANA,	)
SHORELINE TRANSPORTATION, INC.,	)
JACYLYN PALETTA as ADMINISTRATRIX	)
OF THE ESTATE OF MARIO J. CASTRO,	)
Defendants	)

**ANSWER OF THE DEFENDANTS, E.W. WYLIE CORPORATION AND D.W. SMITH, TO  
THE PLAINTIFFS' SECOND AMENDED COMPLAINT**

FIRST DEFENSE

The Defendants, E.W. Wylie Corporation and D.W. Smith, answer the separately numbered paragraphs of the Second Amended Complaint as follows:

**I. PARTIES**

1. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

2. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

3. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W.

Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

4. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

5. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

6. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

7. The defendants deny the allegations contained in this paragraph.

8. The defendants deny the allegations contained in this paragraph.

9. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

10. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

11. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

12. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

13. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

14. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

## **II. JURISDICTION**

15. The defendants deny the allegations contained in this paragraph.

16. The defendants deny the allegations contained in this paragraph.

17. The defendants deny the allegations contained in this paragraph.

### **III. FACTS**

18. The defendants deny the allegations contained in this paragraph.

19. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

20. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

21. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

22. The defendants make no answer to the allegations

contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

23. The defendants deny the allegations contained in this paragraph.

24. The defendants deny the allegations contained in this paragraph.

25. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

26. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

27. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

28. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W.

Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

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30. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

31. The defendants deny the allegations contained in this paragraph.

32. The defendants deny the allegations contained in this paragraph.

**IV. NEGLIGENCE**  
**Steven McDermott v. FedEx Ground Package Systems, Inc.**

33. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

34. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the

defendants, they are hereby expressly denied.

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36. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

**V. NEGLIGENCE**  
**Steven McDermott v. T.S. Pruitt**

37. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

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defendants, they are hereby expressly denied.

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**VI. LOSS OF CONSORTIUM**

**Stacey McDermott v. FedEx Ground Package Systems, Inc.**

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defendants, they are hereby expressly denied.

**VII. LOSS OF CONSORTIUM**  
**Stacey McDermott v. T.S. Pruitt**

45. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

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47. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

48. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

**VIII. NEGLIGENCE**  
**Steven McDermott v. Allegiance Health Care, Inc.**

49. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a

claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

50. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

51. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

52. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

**IX. NEGLIGENCE**  
**Steven McDermott v. D. Ponce**

53. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

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56. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

**X. LOSS OF CONSORTIUM**  
**Stacey McDermott v. Allegiance Health Care, Inc.**

57. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

58. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

59. The defendants make no answer to the allegations

contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

60. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

**XI. LOSS OF CONSORTIUM**

61. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

62. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

63. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

64. The defendants make no answer to the allegations

contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

**XII. NEGLIGENCE**

**Steven McDermott v. E.W. Wylie Corporation**

65. The defendants deny the allegations contained in this paragraph.

66. The defendants deny the allegations contained in this paragraph.

67. The defendants deny the allegations contained in this paragraph.

68. The defendants deny the allegations contained in this paragraph.

**XIII. NEGLIGENCE**

**Steven McDermott v. D.W. Smith**

69. The defendants deny the allegations contained in this paragraph.

70. The defendants deny the allegations contained in this paragraph.

71. The defendants deny the allegations contained in this paragraph.

72. The defendants deny the allegations contained in this paragraph.

**XIV. LOSS OF CONSORTIUM**

**Stacey McDermott v. E.W. Wylie Corporation**

73. The defendants deny the allegations contained in this paragraph.

74. The defendants deny the allegations contained in this paragraph.

75. The defendants deny the allegations contained in this paragraph.

76. The defendants deny the allegations contained in this paragraph.

**XV. LOSS OF CONSORTIUM**  
**Stacey McDermott v. D.W. Smith**

77. The defendants deny the allegations contained in this paragraph.

78. The defendants deny the allegations contained in this paragraph.

79. The defendants deny the allegations contained in this paragraph.

80. The defendants deny the allegations contained in this paragraph.

**XVI. NEGLIGENCE**  
**Steven McDermott v. Arsenberger Trucking, Inc.**

81. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

82. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the

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84. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

**XVII. NEGLIGENCE**  
**Steven McDermott v. J.T. Fosbrink**

85. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

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87. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the

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88. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

**XVIII. LOSS OF CONSORTIUM**

**Stacey McDermott v. Arsenberger Trucking, Inc.**

89. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

90. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

91. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

92. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the



defendants, they are hereby expressly denied.

**XIX. LOSS OF CONSORTIUM**  
**Stacey McDermott v. J.T. Fosbrink**

93. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

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**XX. NEGLIGENCE**  
**Steven McDermott v. Ryder Truck Rental**

97. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a

claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

98. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

99. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

100. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

**XXI. NEGLIGENCE**  
**Steven McDermott v. Lorraine Odzana, as Administratrix of the**  
**Estate of James J. Odzana**

101. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

102. The defendants make no answer to the allegations

contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

103. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

104. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

**XXII. LOSS OF CONSORTIUM**  
**Stacey McDermott v. Ryder Truck Rental**

105. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

106. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

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108. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

**XXIII. LOSS OF CONSORTIUM**  
**Stacey McDermott v. Lorraine Odzana as Administratrix of the**  
**Estate of James J. Odzana**

109. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

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112. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

**XXIV. NEGLIGENCE**  
**Steven McDermott v. Shoreline Transportation, Inc.**

113. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

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116. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

**XXV. NEGLIGENCE**

**Steven McDermott v. Jacylyn Paletta as Administratrix of the  
Estate of Mario J. Castro**

117. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

118. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

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120. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

**XXVI. LOSS OF CONSORTIUM**

**Stacey McDermott v. Shoreline Transportation, Inc.**

121. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W.

122. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

123. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

124. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

**XXVII. LOSS OF CONSORTIUM**  
**Stacey McDermott v. Jaclyn Paletta as Administratrix of the**  
**Estate of Mario J. Castro**

125. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

126. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the

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128. The defendants make no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendants, E.W. Wylie Corporation and D.W. Smith. To the extent that they do state a claim against the defendants, they are hereby expressly denied.

#### SECOND DEFENSE

The plaintiffs were more than 50% at fault in causing the alleged injuries and, therefore, are barred from recovery by the Massachusetts comparative negligence statute, G.L. c. 231, sec. 85.

#### THIRD DEFENSE

If the plaintiffs are entitled to recover against the defendants, then any such recovery must be reduced in accordance with the Massachusetts comparative negligence statute, G.L. c. 231, sec. 85, since the negligence of the plaintiff was the proximate cause of the injuries allegedly sustained.

#### FOURTH DEFENSE

This action is barred by operation of the applicable statute



of limitations.

FIFTH DEFENSE

The Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(4) for insufficiency of process.

SIXTH DEFENSE

The Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(5) for insufficiency of service of process.

SEVENTH DEFENSE

This court lacks jurisdiction over the person of the defendant and, therefore, the Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(2).

EIGHTH DEFENSE

The Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(3) for improper venue.

NINTH DEFENSE

The Complaint fails to state a claim against the defendant upon which relief can be granted and, therefore, the Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

TENTH DEFENSE

The Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) on the grounds that Massachusetts law will not apply and the plaintiffs' claims are precluded by the law of the applicable state and/or Pennsylvania.

ELEVENTH DEFENSE

The Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) on the grounds that the plaintiffs' injuries were not

caused by the defendants, D.W. Smith or E.W. Wylie.

TWELFTH DEFENSE

The acts or omissions which are alleged to have caused the damages and/or injuries referred to in the Complaint were committed by a third party who was not an agent or employee of the defendants, D. W. Smith or E.W. Wylie and for whose acts or omissions the defendants are not legally responsible.

THIRTEENTH DEFENSE

If the plaintiffs are entitled to recover against the defendants, then any such recovery must be reduced in accordance with the Pennsylvania comparative negligence statute, 42 Pa. C.S.A. §7102, since the negligence of the plaintiff was the proximate cause of the injuries allegedly sustained.

FOURTEENTH DEFENSE

The plaintiffs were more than 50% at fault in causing the alleged injuries and, therefore, are barred from recovery by the Pennsylvania comparative negligence statute, 42 Pa. C.S.A. §7102.

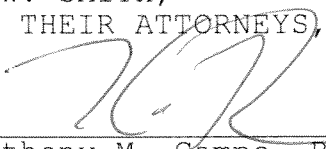
THE DEFENDANTS DEMAND A TRIAL BY JURY.

WHEREFORE, the Defendants demand that this action be dismissed and that judgment be entered in the Defendants' favor together with costs.

THE DEFENDANTS,  
E.W. WYLIE CORPORATION AND  
D.W. SMITH,  
BY THEIR ATTORNEYS,

Date: \_\_\_\_\_

5/8/07



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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(a) and/or Sup. Ct. R. 9A, I, Anthony M. Campo/Kevin M. Riordan, do hereby certify that a copy of the foregoing documents have been served first-class postage prepaid on all parties or their representatives in this action as listed below:

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SIGNED UNDER THE PENALTIES OF PERJURY THIS 8th DAY OF

may, 2007.



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